

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN P. CARTER, Formerly United States Collector
of Internal Revenue, Sixth District of California,
Plaintiff in Error,

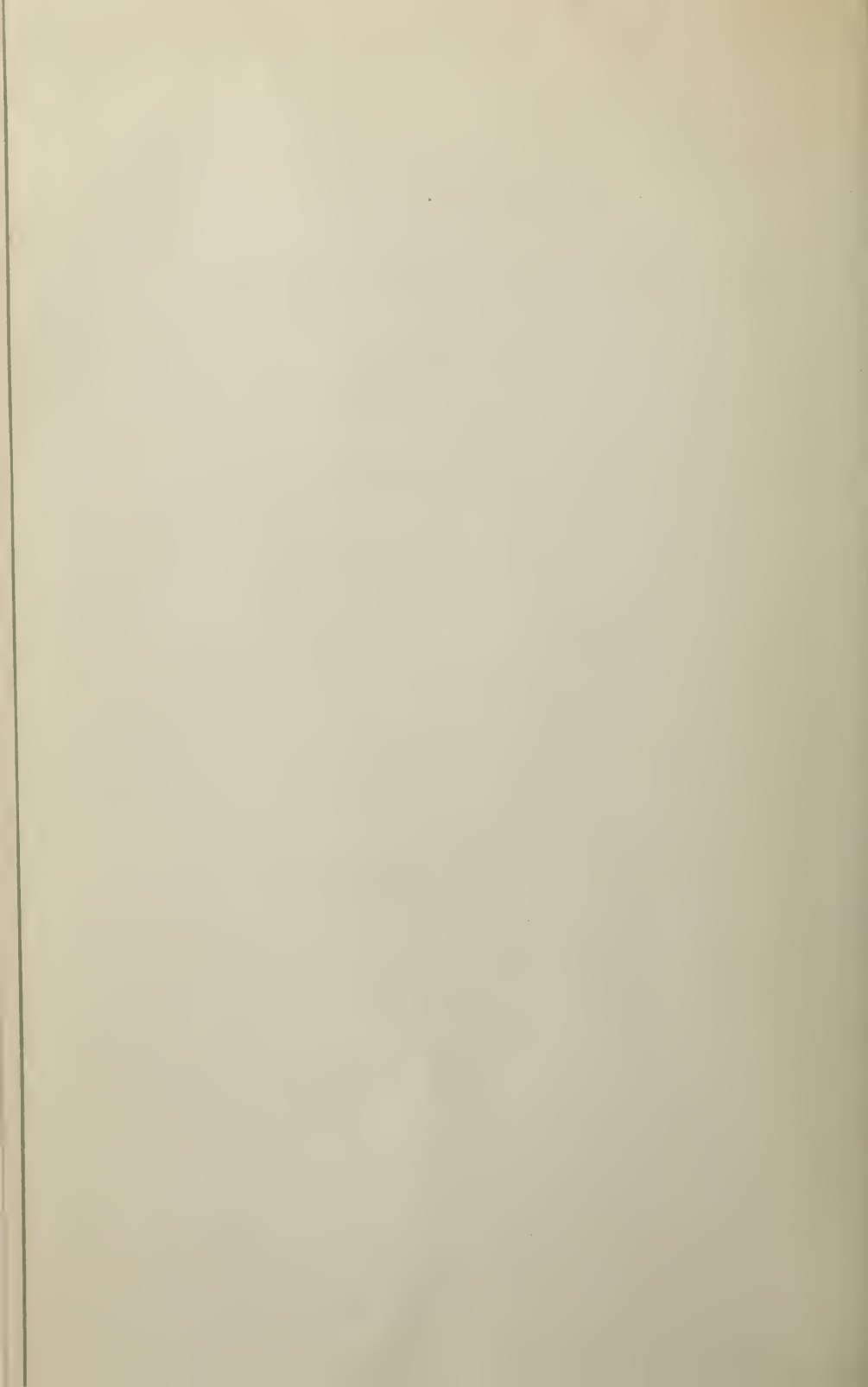
vs.

EDITH AMES ENGLISH, Executrix of the Estate
of Annie B. Ames, deceased; and EDITH AMES
ENGLISH, as an Individual,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.





No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN P. CARTER, Formerly United States Collector
of Internal Revenue, Sixth District of California,
Plaintiff in Error,

vs.

EDITH AMES ENGLISH, Executrix of the Estate
of Annie B. Ames, deceased; and EDITH AMES
ENGLISH, as an Individual,
Defendants in Error.

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Court, for the Southern District of Cal-
ifornia, Southern Division.

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Answer	14
Assignment of Errors.....	35
Citation	2
Clerk's Certificate	41
Complaint	5
Findings of Fact and Conclusions of Law.....	16
Judgment	19
Names and Addresses of Attorneys.....	1
Notice of Entry of Judgment.....	22
Order Allowing Writ of Error.....	3
Petition for Writ of Error.....	37
Stipulation Concerning Transcript on Appeal.....	39
Stipulation of Facts.....	23
Will	24
Writ of Error.....	3

Names and Addresses of Attorneys.

For Plaintiff in Error:

SAMUEL W. McNABB, Esq., United States Attorney; DONALD ARMSTRONG, Esq., Assistant United States Attorney, Federal Building, Los Angeles, California.

For Defendants in Error:

CLAUDE I. PARKER, Esq., RALPH W. SMITH, Esq., 808 Hellman Bank Building, Los Angeles, California.

United States of America, ss.

To EDITH AMES ENGLISH, Executrix of the Estate of Annie B. Ames, deceased; and EDITH AMES ENGLISH, as an individual, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 14th day of April, A. D. 19....., pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause wherein you are Defendants in error, and JOHN P. CARTER, Formerly United States Collector of Internal Revenue, Sixth District of California, is Plaintiff in Error, and you are hereby required to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Edward J. Henning, United States District Judge for the Southern District of California, this 16th day of March A. D. 1926, and of the Independence of the United States, the one hundred and fiftieth year.

Edward J. Henning,
U. S. District Judge for the Southern District
of California.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit Edith Ames English, Executrix of the Estate of Annie B. Ames, deceased, and Edith Ames English as an individual, Plaintiffs, and Defendants in Error, vs. John P. Carter, Formerly United States Collector of Internal Revenue, Sixth District of California Defendant and Plaintiff in Error. Citation Receipt of Copy admitted this 18th day of March, 1926 Claude I Parker Ralph W. Smith Atty for Defendants Filed Mar 20 1926 Chas. N. Williams, Clerk, By L. J. Cordes Deputy Clerk.

United States of America, ss.

The President of the United States of America,

To the Judges of the District Court of the United States, for the Southern District of California,

GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you between EDITH AMES ENGLISH, Executrix of the Estate of Annie B. Ames, deceased; and EDITH AMES ENGLISH, as an individual, Plaintiffs, vs. JOHN P. CARTER, Formerly United States Collector of Internal Revenue, Sixth District of California, Defendant, a manifest error hath happened, to the great damage of the said John P. Carter, Defendant, as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this

behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 14th day of April next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the HON. WILLIAM HOWARD
TAFT, Chief Justice of the United States,
this 16th day of March in the year of our
Lord one thousand nine hundred and twenty-
six and of the Independence of the United
States the one hundred and fiftieth year.

(Seal)

Chas. N Williams

Clerk of the District Court of the United States
of America, in and for the Southern District
of California.

Edward J. Henning
Judge.

By R S Zimmerman,
Deputy Clerk.

The above writ of error is hereby allowed.

I hereby certify that a copy of the within Writ of Error was on the 16th day of March, 1926, lodged in the office of the Clerk of the said United States Dis-

trict Court, for the Southern District of California, Southern Division, for said Defendants in Error.

Chas N Williams

Clerk of the District Court of the United States for the Southern District of California.

By R S Zimmerman

Deputy Clerk.

[Endorsed]: 2044 J United States Circuit Court of Appeals for the Ninth Circuit John P. Carter, Plaintiff in Error vs. Edith Ames English, et al., Defendants in Error Writ of Error Filed Mar 16 1926 Chas. N. Williams Clerk By R S Zimmerman Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

EDITH AMES ENGLISH, Ex-)
ecutrix of the Estate of Annie B.)
Ames, deceased; and EDITH)
AMES ENGLISH, as an indi-)
vidual, Plaintiffs,)
VS.)
JOHN P. CARTER, Formerly)
United States Collector of Inter-)
nal Revenue, Sixth District of)
California, Defendant.)

No. 2044-H
COMPLAINT
(IN LAW)

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Now comes the plaintiffs and complains of the defendant and for cause of action alleges:

I.

That the plaintiffs are now and during all the times herein mentioned were citizens of the State of California and residents of the City of Pasadena in said State.

II.

That on or about the 1st day of September, 1913, the defendant, JOHN P. CARTER, was duly appointed United States Collector of Internal Revenue for the Sixth District of California and at all times since that date was, until the 22nd day of March, 1922, the duly appointed, qualified and acting Collector of Internal Revenue for said district and was during all of said times, and still is a resident and inhabitant of the City of Los Angeles, County of Los Angeles, State of California and of the said Sixth District of California.

III.

That one Annie B. Ames died a citizen of the State of California, testate, in the County of Los Angeles, State of California, a resident of said County and State, on the 15th day of May 1918, and thereafter Letters Testamentary were duly issued by the Superior Court of the State of California, in and for the County of Los Angeles, to Edith Ames English as the Executrix of the Last Will and Testament of said Annie B. Ames, deceased, on the 4th day of June, 1918, and the said Edith Ames English is now and ever since said time has been the duly appointed, qualified and acting executrix of the Last Will and

Testament of said Annie B. Ames deceased, having never defaulted or been discharged.

IV.

That said Edith Ames English, as executrix, and Edith Ames English as an individual as aforesaid, duly filed on the 9th day of May, 1919, with the Collector of Internal Revenue of the United States for the Sixth District of California, Federal Estate Tax Return, Form 706, according to the provisions of law in that regard and the Regulations of the Secretary of the Treasury, established in pursuance thereof. That at the time of filing said Return said plaintiff made no payment of tax to the Collector of Internal Revenue, Sixth District of California, by reason of the fact that the net estate, as returned, indicated no tax liability. Thereafter, however, on the 11th day of February, 1921, the Commissioner of Internal Revenue in and for the United States of America, in writing did inform said plaintiffs that the total Federal Estate Tax liability on the said estate was \$7,450.67.

V.

Said Return for Federal Estate Tax, made as aforesaid by the said Executrix, did not include, for tax purposes in the assets or estate of the said Annie B. Ames, deceased, certain property which had been received by said decedent Annie B. Ames, and the Edith Ames English, as joint tenants and to the survivors thereof, by reason of a bequest in the Last Will and Testament of Charles L. Ames, who died a resident of the County of Los Angeles, State of California on the 24th day of February, 1915. All of the said

property set forth in the Return, being Form 706, was so received by plaintiff, Edith Ames English and Annie B. Ames, deceased, by reason of the will of said Charles L. Ames, deceased, as aforesaid, all of which property was distributed by a decree of Final distribution by the Superior Court of the County of Los Angeles, State of California, in accordance with the terms and provisions of said Will to the said Edith Ames English and Annie B. Ames, deceased, as joint tenants and to the survivor of them, as aforesaid, on the 24th day of February, 1916; All of the said property so received in joint tenancy under the Will of the said Charles L. Ames, deceased, by the said Edith Ames English and Annie B. Ames, deceased, and the circumstances of their receiving title was as required by the regulations of the Secretary of the Treasury, listed under Schedule "D" of said Federal Estate Tax Return, Form 706, but the value of said property so held in joint tenancy was not extended for inclusion in the gross estate because no property or estate was transferred upon the death of Annie B. Ames, deceased, to Edith Ames English, and the said Edith Ames English, plaintiff, received no additional estate upon the death of the said Annie B. Ames, deceased, and no tax is properly chargeable because of the death of the said Annie B. Ames.

VI.

Thereafter on the 11th day of February, 1921, over the protest of the plaintiffs herein, and contrary to the provisions of the Constitution of the United States

and of Title IV of the Revenue Act of 1917, the said Commissioner of Internal Revenue added one-half of all of the property so held by decedent in joint tenancy, to-wit, of the value of \$220,330.38, to the gross taxable estate; the said Commissioner of Internal Revenue determining that the Federal Estate Tax Act, effective Oct. 4, 1917, was retroactive, and therefore covered property, or an interest which had vested prior to the enactment, and in accordance with said findings, the said Commissioner of Internal Revenue thereby increased illegally the gross estate in the sum of \$220,330.38 over the value returned by the said plaintiffs and thereupon assessed an additional Federal Estate Tax, chargeable to plaintiffs as surviving tenant, in the sum of \$7,450.00. That on the 10th day of March, 1921, the plaintiffs paid to the said defendant, as Collector of Internal Revenue, Sixth District of California, the said sum of \$7,450.67; that thereafter, on the 27th day of April, 1921, plaintiffs duly filed with the defendant for transmittal to the said Commissioner of Internal Revenue, a Claim for Refund for the refundment of the said sum of \$7,450.67 heretofore paid, which Claim for Refund, was, thereafter, on the 19th day of August, 1921, duly allowed by the Honorable Commissioner of Internal Revenue in the sum of \$1,263.60 and rejected in the sum of \$6,187.07. That the transfer of the said joint tenancy estate under the Will of the said Charles L. Ames, who died February 24th, 1915, to the said Edith Ames

English and Annie B. Ames, deceased, created in them at that time an absolute vesting and complete title in joint tenancy and to the survivor thereof and to their heirs, of all the right, title and interest of the said Charles L. Ames, deceased, in and to said property, and that on the 15th day of May, 1918, upon the death of the said Annie B. Ames, the said Edith Ames English received no other additional interest or estate in the said joint tenancy properties and, therefore, there was no transfer of property made upon the death of the said Annie B. Ames, deceased within the provisions of the Revenue Act of 1917, and the said property is not subject to the said Federal Estate Tax Act.

VII.

The Revenue Act of 1917, insofar as it attempts to tax the property jointly held by the said Annie B. Ames and Edith Ames English upon the death of the said Charles L. Ames, deceased, is in violation of the Constitution of the United States in that it would take property of the plaintiffs without due process of law in violation of the Fifth Amendment. Further, a tax on the said joint tenancy property would not be a transfer tax or an indirect tax but would be a direct tax thereon in violation of Art. 1, Section IX, Subdivision IV of the Constitution of the United States, because not laid in proper relation to census or enumeration as therein provided and not apportioned among the several states. That the said Revenue Act would then be retroactive and therefore place a tax upon

property vesting before its enactment which, to that extent, would be in direct conflict with the provisions of the Constitution of the United States. That the plaintiffs are the owners of the claim for return of tax upon which this suit is brought, which by virtue of the acts of the defendant has been erroneously, wrongfully, and illegally assessed, demanded, collected and retained, and the plaintiffs have been erroneously, wrongfully and illegally required to pay the sum of \$6,187.07 tax pursuant to said assessment, under duress and under a specific protest as aforesaid, and the said plaintiffs are now entitled to a refund of the said \$6,187.07, so paid as aforesaid, together with interest thereon from the 10th day of March, 1921, at the rate of six per centum per annum, as provided in Section 1019 of the Federal Revenue Act of 1924.

VIII.

No other action has been had on said claim in Congress or by any Department and no person other than plaintiffs are the owners thereof or interested therein; no assignment or transfer of said claim or any part thereof or interest therein has been made by plaintiffs or either of them. The plaintiffs are, therefore, justly entitled to the amount herein claimed from the defendant after allowing all just credits and offsets. The plaintiffs are citizens, and Annie B. Ames and Charles L. Ames were until their death, citizens of the United States, and have at all times borne true allegiance to the Government of the United States and have not or any of them in any way voluntarily aided,

abetted, or given encouragement to rebellion against the said government and that the plaintiffs believe the facts as stated in this complaint to be true.

WHEREFORE, the plaintiffs pray judgment in their favor and against the defendant for the said sum of \$6,187.07, with interest thereon from the 10th day of March, 1921, at the rate of six per centum per annum, until date of payment as provided by Section 1019 of the Revenue Act of 1924.

Edith Ames English
As Executrix.
Edith Ames English
Plaintiffs.

Claude I. Parker
and
Ralph W. Smith
Attorneys for Plaintiffs.

UNITED STATES OF AMERICA,)
STATE OF CALIFORNIA,) SS.
COUNTY OF LOS ANGELES.)

EDITH AMES ENGLISH, Executrix of the Estate of Annie B. Ames, deceased; and EDITH AMES ENGLISH, as an individual, being duly sworn says:

That they are the plaintiffs in the foregoing Complaint duly subscribed by them and that they have read the same and know the contents thereof, and that they believe the facts as stated in said Complaint to

be true; except as to such matters as are therein stated upon information or belief and as to those matters they believe them to be true.

Edith Ames English

As Executrix

Edith Ames English

Subscribed and sworn to before me
this 26th day of May, 1925.

F. G. Cruickshank [Seal]

NOTARY PUBLIC, In and For the
County of Los Angeles, State of Cali-
fornia.

[Endorsed]: No. 2044-H In the District Court
of the United States, in and for the Southern
District of California, Southern Division United
States of America Edith Ames English, Executrix
of the Estate of Annie B. Ames, deceased; and Edith
Ames English, as an individual, Plaintiffs, vs. John P.
Carter, Formerly United States Collector of Internal
Revenue, Sixth District of California, Defendant.
Complaint (In Law) Filed Jun 1 1925 Chas. N.
Williams, Clerk By Edmund L. Smith, Deputy Clerk
Claude I. Parker and Ralph W. Smith 808 Hellman
Bank Building, Los Angeles, California. Attorneys
for Plaintiffs.

IN THE DISTRICT COURT OF THE UNITED
STATES OF AMERICA IN AND FOR THE
SOUTHERN DISTRICT OF CALI-
FORNA SOUTHERN
DIVISION

- - - - -

EDITH AMES ENGLISH, Ex-)	
ecutrix of the Estate of Annie B.)	
Ames, deceased; and EDITH)	
AMES ENGLISH, as an indi-)	No. 2044-H (J)
vidual,)	Law
Vs.)	
JOHN P. CARTER, Formerly)	ANSWER
United States Collector of Inter-)	
nal Revenue, Sixth District of)	
California,)	
Defendant.)	

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Now comes the above named Defendant by his attorneys, and in answer to the complaint of Plaintiffs herein filed denies and avers as follows:

I.

That the said defendant denies generally and specifically each and every allegation and part of plaintiffs' said complaint herein filed.

WHEREFORE, defendant prays that plaintiffs take nothing by reason of their complaint and that said defendant have his costs herein expended.

Samuel W. McNabb

United States Attorney by

Donald Armstrong

Assistant United States Attorney

Attorneys for Defendant.

Verification expressly waived.

Claude I. Parker

Ralph W. Smith

Attorneys for Plaintiffs.

STIPULATION

It is hereby stipulated and agreed by and between the above noted parties and their attorneys that the foregoing answer of said defendant is and may be considered as a specific denial of each and every allegation in said Complaint the same and as if the said Answer was specific in this regard and that the said Answer may place in issue each and every allegation in the said Complaint.

Dated this 18th day of AUGUST, 1925.

Claude I Parker

Ralph W. Smith

Attorneys for Plaintiff

Samuel W. McNabb

United States Attorney

by Donald Armstrong

Assistant United States Attorney

Attorneys for Defendant.

[Endorsed]: No. 2044 H. In the District Court of the United States, for the Southern District of California, Southern Division. Edith Ames English, Executrix of the estate of Annie B. Ames, deceased and Edith Ames English, as an individual, plaintiffs vs John P. Carter, formerly United States Collector of Internal Revenue, defendant. Answer. Receipt of

copy admitted this 29th day of August, 1925 Claude I Parker Ralph W. Smith attorneys for plaintiff
Filed Sep 1 1925 Chas. N. Williams, Clerk By L. J. Cordes, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

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EDITH AMES ENGLISH,) Executrix of the Estate of An-) nie B. Ames, deceased; and) EDITH AMES ENGLISH,) as an individual,)) Plaintiffs,)) VS.))) JOHN P. CARTER, For-) merly United States Collector) of Internal Revenue, Sixth) District of California,)) Defendant.)	No. 2044-H (J) LAW FINDINGS OF FACT AND CONCLUSIONS OF LAW
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This cause came on regularly for hearing before the Court, a jury having been waived by the respective parties, the Honorable Edward J. Henning presiding, and Messrs. Claude I Parker and Ralph W. Smith, appearing as attorneys for plaintiffs and Messrs. Samuel W. McNabb and Donald Armstrong, appearing as attorneys for defendant.

The Court finds that the parties hereto duly stipulated to all the facts in issue, which Stipulation and Agreed Statement of Facts is of record, having been duly filed on the 9th day of October, 1925, and, in this connection, the Court further finds that pursuant to Stipulation of the parties and Agreed Statement of Facts, the Court did on the 5th day of October, 1925, duly make its Order which was filed on the 9th day of October, 1925, in said proceeding, wherein the plaintiffs and defendant were granted time in which to prepare and file briefs in support of their contentions under the facts as duly stipulated to by them, which Order of the Court provided that upon the filing of the Final Brief the said cause should stand submitted; Final Brief having been filed on November 19, 1925, and the Court being fully advised in the premises finds that the facts as stipulated to by the parties are true and correct and that all of the allegations contained and set forth in the complaint of plaintiffs herein on file are true and correct.

The Court further finds that the said Edith Ames English did not succeed within the purview of the Revenue Act of 1917 to any of the joint tenancy estate, as set forth in the complaint, upon the death of Annie B. Ames and no part of the said joint tenancy estate is subject to Federal Estate taxation.

CONCLUSIONS OF LAW.

CONCLUSIONS OF LAW from the foregoing facts, the Court legally concludes:—

I.

That upon the death of the said Annie B. Ames no part of the estate held in joint tenancy by her and the plaintiff, EDITH AMES ENGLISH, is subject to Federal Estate taxation or taxable within the provisions of the Revenue Act of 1917 of the United States of America.

II.

That the plaintiffs are entitled to judgment as prayed for in their said complaint in the sum of Six Thousand One Hundred Eighty-seven Dollars and Seven Cents (\$6,187.07) and interest thereon in the sum of One Thousand Seven Hundred Eighty-two Dollars and Ninety Cents (\$1,782.90), making a total judgment in the sum of Seven Thousand Nine Hundred Sixty-nine Dollars and Ninety-seven Cents (\$7,969.97).

That the Judgment of this Court be entered in accordance with the above Conclusions of Law.

DATED at Los Angeles, California, this 7th day of January, 1926.

Edward J. Henning
JUDGE OF SAID COURT.

Approved as to Form:

Donald Armstrong
Asst. U. S. Atty.

Attorneys for Defendant.

[Endorsed]: No. 2044 H (J) Law. In the District Court of the United States of America in and for the Southern District of California Southern Divi-

sion. Edith Ames English, Executrix of the estate of Annie B. Ames, deceased; and Edith Ames English as an individual, plaintiffs, vs. John P. Carter, formerly United States Collector of Internal Revenue, Sixth District of California, defendant. Findings of Fact and Conclusions of Law. Filed Jan 7 1926 Chas. N. Williams, Clerk By Edmund L. Smith, Deputy Clerk Claude I. Parker, Ralph W. Smith, attorneys for plaintiffs, Hellman Bank Building, Los Angeles.

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

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EDITH AMES ENGLISH,)
 Executrix of the Estate of An-)
 nie B. Ames, Deceased; and) No. 2044-H (J) LAW
 EDITH AMES ENGLISH,)
 as an individual,)

Plaintiffs,)

Vs.)

JUDGMENT

JOHN P. CARTER, For-)
 merly United States Collector)
 of Internal Revenue, Sixth)
 District of California,)
 Defendant.)

This cause came on regularly for hearing before the above entitled Court, the Honorable EDWARD

J. HENNING, presiding, a jury having been waived by the parties, Messrs. Claude I. Parker and Ralph W. Smith, appearing as attorneys for plaintiffs and Messrs. Samuel W. McNabb and Donald Armstrong, appearing as attorneys for defendant. The facts in issue having all been stipulated to by a written Stipulation and Agreed Statement of Facts duly filed by the parties to the action and the said parties having duly stipulated that upon the filing of the Final Brief by the said plaintiffs, the said cause should stand submitted; the Court having made its Order on said Stipulation and Agreed Statement of Facts and the Final Brief having been duly filed, and the case having been closed and duly submitted to the Court for its consideration and decision, after due deliberation thereon the Court files its Findings of Fact and Conclusions of Law and orders that Judgment be entered herein in favor of the plaintiffs and against the defendant in the sum of Seven Thousand Nine Hundred Sixty-nine Dollars and Ninety-Seven Cents (\$7,969.97),

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:—

That the plaintiffs, EDITH AMES ENGLISH, Executrix of the Estate of Annie B. Ames, deceased, and EDITH AMES ENGLISH, as an individual, have judgment against the defendant JOHN P. CARTER, formerly United States Collector of Internal Revenue, Sixth District of California, in the sum of

Seven Thousand Nine Hundred Sixty-nine Dollars
and Ninety-seven Cents (\$7,969.97).

DATED: January 7, 1926.

Edward J. Henning

Judge of Said Court.

Approved as to Form:

Donald Armstrong .

Asst. U. S. Atty.

Attorneys for Defendant.

[Endorsed]: No. 2044-H (J) Law In the Dis-
trict Court of the United States of America in
and for the Southern District of California South-
ern Division Edith Ames English, Executrix of the
Estate of Annie B. Ames, Deceased; and Edith Ames
English, as an individual, Plaintiffs vs. John P. Carter,
Formerly United States Collector of Internal Revenue,
Sixth District of California, Defendant Judgment
Filed Jan 7 1926 Chas. N. Williams, Clerk By Ed-
mund L. Smith, Deputy Clerk. Claude I. Parker
Ralph W. Smith Attorneys for Plaintiffs. Hellman
Bank Building Los Angeles

IN THE DISTRICT COURT OF THE UNITED
STATES OF AMERICA IN AND FOR THE
SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN
DIVISION

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EDITH AMES ENGLISH,)
Executrix of the ESTATE)
OF ANNIE B. AMES, De-)
ceased; and EDITH AMES)
ENGLISH, as an individual,) No. 2044-H (J) LAW
Plaintiffs,) NOTICE OF ENTRY
VS.) OF JUDGMENT
JOHN P. CARTER, For-)
merly United States Collector)
of Internal Revenue, Sixth)
District of California,)
Defendant.)

TO THE ABOVE NAMED DEFENDANT AND
TO MESSRS. SAMUEL W. McNABB and DON-
ALD ARMSTRONG, his attorneys:

YOU AND EACH OF YOU will please take notice
and are hereby advised that on the 7th day of January,
1926, Judgment was duly entered in favor of the
plaintiffs and against the defendant by the Clerk of
the above entitled Court.

Dated this 7th day of January, 1926.

Claude I. Parker

Ralph W. Smith

ATTORNEYS FOR PLAINTIFFS.

[Endorsed]: No. 2044-H(J) Law Dept. In the
District Court of the United States of America in and
for the Southern District of California, Southern Di-

vision Edith Ames English, Executrix of the Estate of Annie B. Ames deceased; and Edith Ames English, as an individual, Plaintiffs vs. John P. Carter, Formerly United States Collector of Internal Revenue, Sixth District of California, Defendant. Notice of Entry of Judgment Received Copy of the within Notice this 11th day of Jan. 1926 Donald Armstrong Asst. U. S. Atty Attorney for deflt. Filed Jan. 11 1926 Chas. N. Williams, Clerk, By L J Cordes Deputy Clerk. Claude I. Parker Ralph W. Smith Attorneys for Plaintiffs. Hellman Bank Building Los Angeles

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

EDITH AMES ENGLISH,)	
Executrix of the Estate of)	
Annie B. Ames, deceased; and)	
EDITH AMES ENGLISH,)	
as an individual,)	NO. 2044-H (J)
Plaintiffs,)	LAW
VS)	STIPULATION
JOHN P. CARTER, Formerly)	OF FACTS.
United States Collector of In-)	
ternal Revenue, Sixth District)	
of California,)	
Defendant.)	

For the purpose of expediting the hearing and trial (and to conserve the time of court, counsel and par-

ties) of the above entitled action herein at issue on the Answer duly filed by the above named defendant, it is hereby stipulated and agreed by and between the above named plaintiffs and the above named defendant and their attorneys, Messrs. Claude I. Parker and Ralph W. Smith for plaintiffs and Messrs. Samuel W. McNabb and Donald Armstrong for defendant, as follows:

1. That the above named Annie B. Ames was the wife and Edith Ames English the daughter of Charles L. Ames, who died testate a resident and citizen of the County of Los Angeles, State of California, on the 24th day of February, 1915. That on the 19th day of June, 1909, the said Charles L. Ames duly executed his Last Will and Testament, which said Last Will and Testament was duly admitted to probate by the Honorable Superior Court of the State of California, in and for the County of Los Angeles, on the 22 day of March, 1915, and Letters Testamentary were immediately thereafter duly issued thereon to the said Annie B. Ames, executrix, the said Last Will and Testament is in words and figures as follows:—

“ WILL

I, Charles L. Ames, of the City of Pasadena, County of Los Angeles, and State of California, being of sound and disposing mind and memory, and of the age of seventy-four years, do make, publish and declare this my last will and testament, hereby revoking all other wills made by me. That is to say:

I give, devise and bequeath all my property, real, personal and mixed, in fee simple title, and wheresoever situated, to my wife, Annie B. Ames and to my daughter Edith Ames English, to be held by them as joint tenants and not as tenants in common, to them and the survivor of them and the heirs of such survivor forever.

Edith Ames English is my only child and heir at law, and my intention is that she and her mother Annie B. Ames or the survivor shall take my estate in fee simple title with full power to sell, convey, will and *evise* as they see fit to do so.

I make this request of my wife and daughter, that they or either of them shall at no time sign a promissory note or a bond, or obligate themselves or any of their property in any way, manner or form, for the payment of the debt of another.

I make, nominate and appoint my wife, Annie B. Ames, and my daughter, Edith Ames English, executors of this my will without bond, that in the performance of their duties as such executors they shall not be required to give any bonds.

SIGNED, SEALED, PUBLISHED and declared as and for my last will and testament, in the presence of the witnesses named below, who in my presence, and in the presence of each other, at my request have signed their names as witnesses hereto, this nineteenth day of June, nineteen hundred and nine.

Charles L. Ames (SEAL)

WITNESSES:

W. W. Ogier	Residing at Pasadena, Calif.
A. M. Harrah	Residing at Pasadena, Calif."

2. That the Last Will and Testament of the said Charles L. Ames devised and bequeathed all of his property, real, personal and mixed, to the said Annie B. Ames, his wife, and Edith Ames English, his daughter, in joint tenancy and to the survivor of them.

That thereafter, to-wit, on the 24th day of February, 1916, the Honorable Superior Court of the County of Los Angeles, State of California, duly made and entered its "Order Settling the Final Account and For Distribution Under Will" of all the property and estate of the said Charles L. Ames, deceased, and did then and there distribute said property and estate in accordance with the said Will, which Order and Decree of Distribution, omitting the caption is as follows:—

"Now comes Annie B. Ames and Edith Ames English, the executrices of the will of said deceased, by F. G. Cruickshank, their attorney, and prove to the satisfaction of the Court that their final account and petition for distribution herein was rendered and filed on the 8th day of February, 1916; that on the same day the Clerk of this Court appointed the 23rd day of February, 1916, for the settlement and hearing thereof; that due and legal notice of the time and place of said settlement and hearing has been given as required by law, and the said account and petition are now presented to the Court; and no person appearing to except to or contest said account or petition, the Court, after hearing the evidence, settles said

account and orders distribution of said estate as follows :

It is ordered, adjudged and decreed by the Court that said executrices have in their possession belonging to said estate, after deducting the credits to which they are entitled, a balance of \$282,573.00, which consists of personal property and real estate hereinafter described at the value of the appraisal, and that said account be approved, allowed and settled accordingly; that all of said property was the separate property of said deceased; and that in pursuance of, and according to the provisions of the last will of said deceased, all of the residue of said estate, as hereinafter described, and all other property belonging to said estate whether described herein or not, be and the same is hereby distributed as follows, to-wit:

To Annie B. Ames, widow of deceased, and Edith Ames English, daughter of deceased, as joint tenants and not as tenants in common.

The property of said estate hereby distributed so far as the same is known, is described as follows: 30 shares of the capital stock of East Jordan Realty Company; 625 shares of the capital stock of East Jordan and Southern Railroad Company; 125 shares of the capital stock of East Jordan Planing Mills Company; 256 shares of the capital stock of East Jordan Flooring Company; 5000 shares of the capital stock of East Jordan Lumber Company; 14777 shares of the capital stock of the Chicago and Colorado Development and Mining Company; 180 shares of the capital stock

of Sinaloa Land and Water Company; 25 shares of the capital stock of Sinaloa Realty Company; subscription of 25 shares of capital stock of the Conservative Rubber Production Company; 140,000 shares of the capital stock of the Rockhill Mining Company; 1500 shares of the capital stock of Pacific Building Company; 300 shares of the capital stock of the Associated Home Builders; note and mortgage of Robert J. Kerr for \$750.00; an undivided $\frac{1}{4}$ interest in two notes for \$500.00 and \$1,000.00 signed by Patrick Dowd and Kate Dowd; household furniture and furnishings in the home of deceased; one Hudson automobile; and the following described real property, to-wit:

Parcel 1:—The West 120 feet of Lots 9 and 15 in Division A of the James Smith Tract, in the City of Pasadena, Los Angeles County, California; as per map recorded in Book 6, Page 250, Miscellaneous Records of said County, particularly described as follows, to-wit:

Beginning at the Northwest corner of said Lot 9 in the South Line of Bellevue Drive; thence East along said line 120 feet; thence South parallel with the West line of said Lot 15 to the North line of Palmetto Drive; thence West along the North line of Palmetto Drive 120 feet to the Southwest corner of said Lot 15; thence North along the West line of said Lots 9 and 15 to point of beginning.

Parcel 2:—Lot 7 of Washington Square, in the City of Pasadena, Los Angeles County, California; as per

map recorded in Book 9, Page 50 of Maps, in the Office of the County Recorder of said County.

Parcel 3:—An undivided $\frac{1}{2}$ interest in Lot 8 of Legge's Lower Tract, in the City of Pasadena, Los Angeles County, California, according to a map of said tract recorded in Book 10, Page 18, Miscellaneous Records of said Los Angeles County.

Parcel 4:—The fractional South $\frac{1}{2}$ of Section 7, being that portion thereof bounded on the North and West by the North and West Patented Boundary Lines of the Lands known as and called the "Rancho Santa Ana Del Chino," on the East and South by the East and South Boundary Lines of said Section; in Township 2 South, Range 8 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California.

Parcel 5:—Section 18, in Township 2 South, Range 8 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California.

Parcel 6:—The East $\frac{1}{2}$ of Section 13, Township 2 South, Range 9 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California.

Parcel 7:—Lots 32 and 33, in Section 9, Township 2 South Range 8 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California; according to a map of the subdivision of part of the Rancho Santa Ana Del Chino, as per plat recorded in Book 6 of Maps, Page 15, of the records of said County.

Parcel 8:—Lots 34, 47, 49 and 50 in Section 9, Township 2 South Range 8 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, according to Map "D", being a map of the extension of the subdivision of the Rancho Santa Ana Del Chino, as per plat recorded in Book 12, of Maps, page 47 of the Records of said County.

Parcel 9:—Also the S.E. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Section 9, Township 2 South, Range 8 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, otherwise described as Lot 48 in Section 9, as per plat in the Rancho Santa Ana Del Chino, recorded in Book 6 of Maps, page 15 of the Records of said County.

DATED this 23rd day of February, 1916.

James C. Rives

Judge of said Superior Court."

That the said Annie B. Ames died testate a resident and citizen of the County of Los Angeles, State of California, on the 15th day of May, 1918, and thereafter Letters Testamentary were duly issued by the Honorable Superior Court of the State of California, in and for the County of Los Angeles, to Edith Ames English as the executrix of the Last Will and Testament of the said Annie B. Ames, deceased, on the 4th day of June, 1918, and the said Edith Ames English is now and ever since said time has been the duly appointed, qualified and acting executrix of the Last Will and Testament of said Annie B. Ames, deceased, having never defaulted or been discharged.

3. That said Edith Ames English, as executrix, and Edith Ames English as an individual as aforesaid, duly filed on the 9th day of May, 1919, with the Collector of Internal Revenue of the United States for the Sixth District of California, Federal Estate Tax Return, form 706, according to the provisions of law in that regard and the Regulations of the Secretary of the Treasury, established in pursuance thereof. That at the time of filing said Return said plaintiffs made no payment of tax to the Collector of Internal Revenue, Sixth District of California, by reason of the fact that the net estate, as returned, indicated no tax liability. Thereafter, however, on the 11th day of February, 1921, the Commissioner of Internal Revenue, in and for the United States of America, in writing did inform said plaintiffs that the total Federal Estate Tax liability on the said estate was \$7,450.67.

4. That the said Return for Federal Estate Tax, made as aforesaid by the said Executrix, did not include for tax purposes in the gross estate of the said Annie B. Ames, deceased, the property so received by her in joint tenancy with Edith Ames English through the Will of the said Charles B. Ames, who died February 24, 1915, although the said property, the taxability of which is herein in controversy, was duly listed under Schedule "D" of said Federal Estate Tax Return, Form 706.

That the property passing in the Will of Charles L. Ames, deceased, and distributed to Annie B. Ames

and Edith Ames English by the Order and Decree of Distribution on the 24th day of February, 1916, is the identical property owned by Annie B. Ames and Edith Ames English at the time of the death of Annie B. Ames, and by them held in joint tenancy, and is the same and identical property returned herein and noted in Schedule "D" for Federal Estate Tax purposes and upon which the Treasury Department of the United States of America claims a tax.

5. That on the 11th day of February, 1921, over the protest of the above named plaintiffs, the Honorable Commissioner of Internal Revenue did on said day add one-half of all of the said property so received by Annie B. Ames, deceased, and Edith Ames English under the Last Will and Testament of Charles L. Ames, deceased, and so owned by them as joint tenants, to-wit, of the value of \$220,330.83, to the gross taxable estate of the said Annie B. Ames, deceased, and did thereupon assess an additional Federal Estate Tax, chargeable to plaintiffs in the sum of \$7,450.67.

That on the 10th day of March, 1921, the plaintiffs paid under written protest to the said defendant, as Collector of Internal Revenue, Sixth District of California, the said sum of \$7,450.67; that thereafter, on the 27th day of April, 1921, plaintiffs duly filed with the defendant for transmittal to the said Commissioner of Internal Revenue, a Claim for Refund for the refundment of the said sum of \$7,450.67 heretofore paid, which Claim for Refund, was, thereafter, on the 19th

day of August, 1921, duly allowed by the Honorable Commissioner of Internal Revenue in the sum of \$1,263.60 and rejected in the sum of \$6,187.07. That the Plaintiffs are the owners of the Claim for Refund of tax upon which this suit is brought. No other action has been had on said Claim in Congress or by any Department and no person other than plaintiffs are the owners thereof or interested therein, no assignment or transfer of said Claim or any part thereof or interest therein has been made by plaintiffs or either of them. The plaintiffs and each of them are citizens, and Annie B. Ames and Charles L. Ames were until their death, citizens of the United States, and residents of and domiciled in the State of California, and have at all times borne true allegiance to the Government of the United States and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government, or given comfort to any sovereign or government that is or ever has been at war with said United States.

6. Any party to this stipulation may, upon the hearing or trial of this matter, introduce as evidence of the facts herein stated, the whole, or any part, of this stipulation; subject to the right of any other party to object thereto on the grounds that the same is immaterial, incompetent or irrelevant, or any other objection that they might see fit to make, except as to the manner in which the evidence is presented. The

parties may introduce such other and further evidence as may be material, relevant and/or competent.

DATED this 8 day of October, 1925.

Claude I. Parker

Ralph W. Smith

Attorneys for Plaintiffs.

Donald Armstrong

Assistant U. S. Atty

Attorneys for Defendant.

[Endorsed]: No. 2044-H (J) Law. In the District Court of the United States of America, in and for the Southern District of California Southern Division. Edith Ames English, Executrix of the Estate of Annie B. Ames, deceased; and Edith Ames English, as an individual, plaintiff vs. John P. Carter, Formerly U. S. Collector of Internal Revenue, 6th District of California Defendant. Stipulation of Facts. Filed Oct. 9 1925 Chas. N. Williams, Clerk, by Edmund L. Smith, deputy clerk Claude I. Parker Ralph W. Smith Attorneys for Plaintiffs. Hellman Bank Building Los Angeles

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

EDITH AMES ENGLISH,)
Executrix of the ESTATE)
OF ANNIE B. AMES, De-)
ceased; and EDITH AMES)
ENGLISH, as an individual,)
Plaintiffs and)
Defendants in Error,)
vs.)
JOHN P. CARTER, For-)
merly United States Collector)
of Internal Revenue, Sixth)
District of California,)
Defendant and)
Plaintiff in Error.)

No. 2044-H (J)
LAW
ASSIGNMENT
OF ERRORS.

And now comes the plaintiff in error, by Samuel W. McNabb and Donald Armstrong, his attorneys, and in connection with his petition for a writ of error says that in the record, proceedings and in the final judgment aforesaid manifest error has intervened to the prejudice of the plaintiff in error, to-wit:

I.

That the court erred in not entering judgment for the plaintiff in error herein upon the agreed statement of facts and upon the facts as found by the court in its findings of fact.

II.

That the conclusions of law as made by the court are not supported by the findings of fact.

III.

That the judgment as entered herein is contrary to law.

By reason whereof plaintiff in error prays that the judgment aforesaid may be reversed.

Dated: Los Angeles, California, this 16 day of March, 1926.

SAMUEL W. McNABB,
United States Attorney,
Donald Armstrong
Donald Armstrong,
Assistant United States Attorney,
Attorneys for Plaintiff in Error.

We hereby certify that the foregoing assignment of errors is made in behalf of the plaintiff in error hereinabove named, for a writ of error and is, in our opinion, and the same now constitutes the assignment of errors upon the writ prayed for.

SAMUEL W. McNABB,
United States Attorney,
DONALD ARMSTRONG,
Assistant United States Attorney,
Attorneys for Plaintiff in Error.

[Endorsed]: No. 2044-H (J) In the District Court of the United States for the Southern District of California Southern Division Edith Ames English, et al., Plaintiffs and Defendants in Error, vs. John P. Carter, Defendant and Plaintiff in Error Assignment of Errors. Filed Mar 16 1926 Chas. N. William, Clerk By R S Zimmerman Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

EDITH AMES ENGLISH,)	
Executrix of the ESTATE)	
OF ANNIE B. AMES, De-)	
ceased; and EDITH AMES)	
ENGLISH, as an individual,)	No. 2044-H (J) LAW
Plaintiffs and)	
Defendants in Error,)	
vs.)	PETITION FOR
JOHN P. CARTER, For-)	WRIT OF ERROR.
merly United States Collector)	
of Internal Revenue, Sixth)	
District of California,)	
Defendant and)	
Plaintiff in Error.)	

TO THE HONORABLE EDWARD J. HENNING, Judge of said Court:

Now comes the defendant, John P. Carter, formerly United States Collector of Internal Revenue, Sixth District of California, by Samuel W. McNabb and Donald Armstrong, his attorneys, and feeling himself aggrieved by the final judgment of this court entered against him and in favor of Edith Ames English, executrix of the estate of Annie B. Ames, deceased, and Edith Ames English, as an individual, on the 8th day of January, 1926, hereby prays that a writ of error may be allowed to him from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the Southern District of California; and in connection with this

petition, petitioner hereby presents his assignments of error.

Petitioner further prays that an order of supersedeas may be entered herein pending the final disposition of this cause.

SAMUEL W. MC NABB,
United States Attorney,
Donald Armstrong
DONALD ARMSTRONG,
Assistant United States Attorney,
Attorneys for Defendant and
Plaintiff in Error.

[Endorsed]: No. 2044-H (J) Law In the District Court of the United States for the Southern District of California Southern Division Edith Ames English, et al., Plaintiffs and Defendants in Error, vs. John P. Carter, Defendant and Plaintiff in Error. Petition for Writ of Error. Filed Mar 16 1926 Chas. N. Williams, Clerk By R S Zimmerman Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

EDITH AMES ENGLISH,)	
Executrix of the ESTATE)	
OF ANNIE B. AMES, De-)	
ceased; and EDITH AMES)	No. 2044-H (J) LAW
ENGLISH, as an individual,)	
Plaintiffs and)	
Defendants in Error,)	
vs.)	STIPULATION
JOHN P. CARTER, For-)	CONCERNING
merly United States Collector)	TRANSCRIPT ON
of Internal Revenue, Sixth)	APPEAL.
District of California,)	
Defendant and)	
Plaintiff in Error.)	

IT IS HEREBY STIPULATED by and between the parties to the above entitled cause, through their respective attorneys, that the transcript on appeal shall consist of the following documents, papers and records:

1. The complaint filed by the plaintiffs,
2. The answer filed by the defendant,
3. The agreed stipulation and statement of facts,
4. The findings of fact and conclusions of law,
5. The judgment,
6. The notice of entry of judgment.
7. The petition for a writ of error,
8. Assignments of error,
9. Citation
10. The writ of error.

IT IS FURTHER STIPULATED by and between the parties above named, through their respective counsel that the agreed statement of facts contains all

of the evidence presented to the Court in the above entitled action and shall be and is included in the said transcript of record in lieu and in place of a bill of exceptions, and that no bill of exceptions need be filed by the plaintiff in error herein.

IT IS FURTHER STIPULATED by and between the respective parties in the above entitled action, through their respective attorneys that the merely formal parts of the papers and pleadings need not be included in the transcript of record.

Dated: Los Angeles, California, March 18th, 1926.

CLAUDE I. PARKER,

RALPH W. SMITH,

By Ralph W. Smith

Attorneys for Plaintiffs and
Defendants in Error,

SAMUEL W. McNABB,

United States Attorney,

Donald Armstrong

Assistant United States Attorney,

Attorneys for Defendant and

Plaintiff in Error.

IT IS SO ORDERED.

Edward J. Henning

United States District Judge.

[Endorsed]: No. 2044-H (J) Law In the District Court of the United States for the Southern District of California Southern Division. Edith Ames English, et al., plaintiffs and defendants in error, vs. John P. Carter, formerly United States Collector of Internal Revenue, Sixth District of California, defendant and plaintiff in error. Stipulation Concerning Transcript on Appeal. Filed Mar 20 1926 Chas. N. Williams, Clerk By L. J. Cordes, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

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EDITH AMES ENGLISH,)	
Executrix of the ESTATE)	
OF ANNIE B. AMES, De-)	
ceased; and EDITH AMES)	
ENGLISH, as an individual,)	No. 2044-H (J) LAW
Plaintiffs,)	
VS.)	CLERK'S
JOHN P. CARTER, For-)	CERTIFICATE.
merly United States Collector)	
of Internal Revenue, Sixth)	
District of California,)	
Defendant.)	

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 40 pages, numbered from 1 to 40 inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by the plaintiff-in-error, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, writ of error, and order allowing writ of error, complaint, answer, findings of fact and conclusions of law, judgment, notice of entry of judgment, stipulation of facts, assignment of errors, petition for writ of error, and stipulation concerning transcript on appeal.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Writ of Error amount to..... and has been charged to the United States of America the plaintiff-in-error herein.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed the Seal of the District Court for the United States of America, in and for the Southern District of California, Southern Division, this.....day of April, in the year of Our Lord One Thousand Nine Hundred and Twenty-six, and of our Independence the One Hundred and Fiftieth.

CHAS. N. WILLIAMS,

Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.